

THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972

No. 71-5656

DORIS PHILPOTT AND WILLIAM WILKES,
Petitioners,

—v.—

ESSEX COUNTY WELFARE BOARD,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF NEW JERSEY

I N D E X

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IN THE ESSEX COUNTY COURT**No. A-11440****ESSEX COUNTY WELFARE BOARD, PLAINTIFF****v.****DORIS PHILPOTT, ET AL., DEFENDANT****COMPLAINT****Filed September 9, 1968**

Plaintiff, Essex County Welfare Board, a corporate entity of New Jersey, having its principal office at the Hall of Records, Newark, Essex County, New Jersey, complaining of the defendants, says:

1. Defendant, William Wilkes, filed an application for assistance under the Disability Program administered by the plaintiff herein.
2. Defendant, William Wilkes, received assistance as a permanent and totally disabled needy person from the Essex County Welfare Board from February, 1967 through August 31, 1968, totalling \$2,082.00.
3. Under the provisions of Title 44, Chapter 7, Revised Statutes of New Jersey, defendant, William Wilkes executed an Agreement to Reimburse under which he pledged to the plaintiff as a guarantee for the reimbursement of the funds so granted as assistance, all and every part of his real and personal property, and he further agreed to hold same free from sale, transfer or assignment, and not otherwise to dispose of same, except upon the consent of the plaintiff in writing. A copy of said Agreement to Reimburse is attached hereto and made a part hereof.
4. Defendant, William Wilkes, received check for a lump sum payment of Social Security Benefits in the amount of \$1,864.20 which he has failed to turn over to the plaintiff as required under the Agreement to Reimburse, aforesaid.

5. Defendant, William Wilkes, together with the defendant, Doris Philpott, entered into a plan to conceal said lump sum payment by having William Wilkes endorse said Social Security check, and depositing same in an account maintained by Doris Philpott at the Fidelity Union Trust Company, American Branch, located at 241 Springfield Avenue, Newark, New Jersey.

6. Said transfer of funds to the defendant, Doris Philpott was purposely made to conceal said funds and to defraud the Essex County Welfare Board of its lawful rights to same.

Wherefore plaintiff demands judgment:

A. Directing the defendants to turn over to the plaintiff the balance of the bank account up to the sum of \$1,864.20, maintained by the defendant, Doris Philpott, at the Fidelity Union Trust Company, American Branch; or in the alternative that a judgment be entered against the defendants, Doris Philpott and William Wilkes for the sum of \$1,864.20.

B. That the defendants show cause before this Court why a judgment and order, in accordance with the prayers herein contained should not be entered.

C. That defendants be restrained from disposing of said bank account until further order of this Court.

/s/ John A. Matthews, Jr.
JOHN A. MATTHEWS, JR.
Attorney for Plaintiff

COMPLAINT

STATE OF NEW JERSEY)
)
 ss
COUNTY OF ESSEX)

Philip K. Lazaro, of full age, being duly sworn according to law, upon his oath deposes and says:

1. I am the Director of the Essex County Welfare Board, and I am duly authorized to make this affidavit on behalf of the plaintiff.
2. I have read the foregoing Complaint, and the allegations therein contained are true to the best of my knowledge, information and belief.

/s/ Philip K. Lazaro
PHILIP K. LAZARO

Sworn and subscribed to before me this 9th day of September, 1968.

Sydney H. Kleinberg
SIDNEY H. KLEINBERG
An Attorney at Law of New Jersey

F. O. I.

Case Number ED11761

AGREEMENT TO REIMBURSE

THIS AGREEMENT, made this 13th day of September in the year of our Lord one thousand nine hundred and 1966 between William Wilkes residing at 238 Grove St in Newark, County of Essex, State of _____, hereinafter called the Recipient; and _____, residing at _____, in the County of _____ and State of _____, herein after called the Spouse; and the _____ County Welfare Board, a corporate entity of the State of New Jersey, hereinafter called the Board.

WITNESSETH

1. That the Recipient has made application to the Board for a grant of assistance as authorized under the provisions of Title 44, Chapter 7, Revised Statutes of New Jersey, as amended and supplemented, which said grant has been or may be approved by the Board contingent upon the execution of this Agreement.
2. That for and in consideration of the said grant of assistance and in accordance with the provisions of Title 44, Chapter 7, Revised Statutes of New Jersey, the Recipient and the Spouse herewith agree, jointly and severally, to reimburse said Board for all assistance paid to or on behalf of said Recipient.
3. That the Recipient and Spouse do hereby pledge to the said Board as a guarantee for the reimbursement of the funds so granted as assistance, all and every part of their real or personal property wherever found, and do further agree to hold the same free from sale, transfer or assignment, and not otherwise to dispose of same except upon the consent of the said Board in writing so to do, and further agree to assign to the said Board as collateral security for such advances all or any part of

their personal property as the Board shall or may from time to time specify.

4. That the said assistance grants to the Recipient being a direct benefit to the Spouse, the said Spouse does herewith and hereby release any vested or contingent property rights or future estates that he or she may now or at any time have in the above property so pledged whether owned by the said Recipient or by them jointly, and whether such rights shall arise by way of dower or courtesy or in any manner whatsoever.

5. That said release and joinder by the Spouse herein shall be as valid and effectual as if the Spouse had joined the Recipient in a conveyance of property to a third party, and the grant of assistance to the said Recipient being contingent upon such release and joinder by the Spouse shall be good and valuable consideration therefore.

6. That the said Board shall cause to be filed with the Clerk of the County Court or Register of Deeds and Mortgages in any County, a Notice of this Agreement to Reimburse, which Notice as of the date of such filing, shall have the same effect as a lien by judgment, and any real estate or land in which the Recipient and Spouse, jointly or severally, have or shall acquire a title or interest shall thereupon become charged and encumbered with a lien for assistance granted the Recipient, and said Notice shall have priority over all unrecorded encumbrances, and the said Board shall and may proceed at any time for the purpose of securing reimbursement in such manner and form as in the Statutes in such case made and provided.

This Agreement shall well and truly bind the parties hereto, his or her or their heirs, executors, administrators and assigns, to the faithful performance of the covenants and agreements, hereinbefore set forth.

IN WITNESS WHEREOF, all the parties hereto have interchangeably set their hands and seals or have caused these presents to be signed by its duly authorized officer and its seal to be hereto affixed the day and year first above written.

/s/ William Wilkes (L.S.)

Signed, Sealed and delivered in the presence of

/s/ [Illegible]

Essex County Welfare Board

By: /s/ Philip K. Lazaro (L.S.
Director of Welfare

STATE OF NEW JERSEY)

COUNTY OF ESSEX)

BE IT REMEMBERED that on this 17th day of September in the year of our Lord one thousand nine hundred and 66 before me the Subscriber, a duly authorized employee of the Essex County Welfare Board, personally appeared William Wilkes who, I am satisfied, is the pledgor in the within contract named, and I having made known to him the contents thereof he did thereupon acknowledge that he signed, sealed and delivered the same as his voluntary act and deed for the uses and purposes therein expressed.

/s/ [Illegible]
Case Worker

ORDER TO SHOW CAUSE
b6
(Filed September 9, 1968)

This matter being opened to the Court by John A. Matthews, Jr. attorney for plaintiff, and the Court having read the verified complaint, and good cause being shown,

It is on this 9th day of September, 1968

ORDERED that Doris Philpott and William Wilkes show cause before the Essex County Court, Law Division, at the Essex County Court House, Newark, New Jersey on the 27th day of September, 1968 at 9:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, why defendants Doris Philpott and William Wilkes should not be ordered to pay to the plaintiff the balance in an account maintained by Doris Philpott at the Fidelity Union Trust Company, American Branch, up to the sum of \$1,864.20.

It is further ordered that the defendants be and they are hereby restrained from withdrawing any monies on deposit in the account maintained by said Doris Philpott in said Fidelity Union Trust Company, and that the Fidelity Union Trust Company is hereby restrained from honoring any withdrawals from said account until further order of the Court.

It is further ordered that true copies of this Order to Show Cause and the Complaint filed in the matter, both of which may be certified as true copies by the attorney for plaintiff, to be served upon Doris Philpott, William Wilkes and Fidelity Union Trust Company, personally 8 days before the return date hereof.

/s/ Van Y. Clinton
J.C.C.

ANSWER

(Filed September 30, 1968)

The defendants, William Wilkes and Doris Philpott, by way of answer to the complaint herein says that:

1. Defendants lack sufficient knowledge or information to form a belief in respect to the allegations of paragraphs 1.
2. Defendants admit defendant William Wilkes, received assistance as a permanently and totally disabled needy person from the Essex County Welfare Board, but aver that they lack sufficient knowledge or information to form a belief as to the date of commencement of said payments and the exact total of the payments.
3. Defendants lack sufficient knowledge or information to form a belief in respect to the allegations of paragraphs 3.
4. Defendants admit that Mr. Wilkes received a check for a lump-sum payment of Social Security benefits in the amount of \$1,864.20, and admit that he did not turn that check over to the plaintiff, but denies that he was under any obligation to turn said check over to the plaintiff.
5. Defendants admit that said check was deposited in an account maintained by Doris Philpott or Fidelity Union Trust Company, American Branch located at 241 Springfield Avenue, Newark, New Jersey. In all other respects as set forth in this statement, paragraph 5 is denied.
6. Defendants deny the allegations of paragraph 6.

FIRST SEPARATE DEFENSE

The provisions of Title 42 of the United States Code Annotated Section 407 prevents the transfer or assignment of the rights of any person to any future payment under Title II of the Social Security Act.

SECOND SEPARATE DEFENSE

The provisions of Title 42 of the United States Code, Section 407 require that none of the money paid or pay-

able or rights existing under Title II of Social Security Act shall be subject to execution, levy, attachment, garnishment or other legal process.

THIRD SEPARATE DEFENSE

The provisions of Title 42 of the United States Code, Section 407 create an express exception to the provisions of Title 44, of New Jersey Statute which provides for the reimbursement of funds received under said chapter. The Social Security Act enacted pursuant to proper authority under the United States Constitution occupies (by virtue of Article VI, clause II of the United States Constitution) the field so as to preclude execution, levy, attachment, garnishment, or other legal process by any other creditor.

FOURTH SEPARATE DEFENSE

Taking all of a person's money or property so that he is forced to continue to receive state assistance is both irrational and inconsistent with the purposes and aims of Title 44, particularly that of helping the recipient attain self support and personal independence.

FIFTH SEPARATE DEFENSE

The Agreement to Reimburse can only be read to reach real or personal property in the applicant's possession or in which the applicant has a present right at the time of the execution of the document. It does not reach expectancies or property in which the applicant does not have a present right at the time of the execution of the document.

SIXTH SEPARATE DEFENSE

Conditioning the receipt of public assistance on the execution of an Agreement to Reimburse does not further the legitimate objectives of public assistance and deprives the recipient of liberty and equality secured by the Fourteenth Amendment to the United States Constitution.

SEVENTH SEPARATE DEFENSE

Conditioning the receipt of public assistance on the execution of an Agreement to Reimburse is coercive and unconscionable in that it places a condition on the right or entitlement to public assistance.

WHEREFORE, defendants demand judgment:

- a. adjudicating the money as belonging to defendants;
- b. dismissing the complaint.

/s/ Stephen Apollo
STEPHEN APOLLO
Attorney for Defendants
of record

GEORGE CHARLES BRUNO
of counsel

STATE OF NEW JERSEY :
: ss.

COUNTY OF ESSEX :

AFFIDAVIT OF SERVICE

The undersigned, of full age, being duly sworn according to law, upon my oath depose and say:

1. I am an employee of Newark Legal Service Project, attorneys for defendant in the within action.
2. On September 30, 1968, I mailed a copy of the within Answer, certified mail, return receipt requested, to the attorney for plaintiff, John Matthews, Esq., Essex County Welfare Board, Hall of Records, Newark, New Jersey, at the United States Post Office, and obtained receipt number of such mailing.

/s/ George C. Bruno

Sworn & subscribed to before me this 30th day of September, 1968.

/s/ Margretta B. Sumner
MARGRETTA B. SUMNER
A Notary Public of New Jersey
My Commission Expires Sept. 27, 1972

NOTICE OF MOTION FOR SUMMARY JUDGMENT
(Filed November 6, 1968)

To: **FELIX A. MARTINO, Esq.**
Attorney for Essex County Welfare Board
Hall of Records
Newark, New Jersey

SIR:

TAKE NOTICE that on November 27, 1968, at ten o'clock in the forenoon, or as soon thereafter as counsel can be heard, the undersigned, attorney for the defendants, Doris Philpott and William Wilks, will make application to the County Court, Law Division, Essex County, at the Hall of Records, Newark, New Jersey, for a summary judgment in favor of the defendants upon their demand set forth in the answer in this action.

/s/ Michael P. Ambrosio
MICHAEL P. AMBROSIO
Attorney for the defendants,
Doris Philpott and
William Wilks

GEORGE CHARLES BRUNO
of Counsel

ORDER

Filed November 26, 1968

This matter being opened to the court by John A. Matthews, Jr., Esq., attorney for the plaintiff, Essex County Welfare Board, in the presence of Newark Legal Services Project, George C. Bruno, Esq., appearing, attorneys for the defendants, Doris Philpott and William Wilkes, on the return date of an order to show cause why the defendants, Doris Philpott and William Wilkes, should not be ordered to pay to the plaintiff, Essex County Welfare Board, the balance in an account maintained by the said defendant, Doris Philpott, at the Fidelity Union Trust Company up to the sum of one thousand eight hundred and sixty four dollars and twenty cents (\$1,864.20); and why the said defendants, Doris Philpott and William Wilkes, should not be restrained from withdrawing any monies on deposit in the said account maintained in the Fidelity Union Trust Company and why the defendant, Fidelity Union Trust Company, should not be restrained from honoring any withdrawals from said account; and it appearing that the respective parties have agreed to enter into a written stipulation of the facts to be argued in this matter, and it further appearing that the said defendants, Doris Philpott and William Wilkes, have consented to a continuation of the restraint imposed by the order to show cause entered in this matter on September 9, 1968 restraining any withdrawals from the said account maintained by the said defendants, Doris Philpott and William Wilkes, pending a final determination in this matter;

It is thereupon on this 18th day of November, 1968, ordered and adjudged that the defendants, Doris Philpott and William Wilkes, be and are hereby restrained from withdrawing any monies on deposit in the account maintained by the defendant, Doris Philpott, at the Fidelity Union Trust Company, and that the said defendant, Fidelity Union Trust Company, is hereby restrained from honoring all withdrawals from said account until further order of this court;

It is further ordered that this matter be returned to the active motion calendar list and that a hearing date be set for December 20, 1968.

The defendants do hereby consent to the form and contents of the within order.

/s/ Samuel A. Larner, J.S.C.
J.C.C.

NEWARK LEGAL SERVICES PROJECT
ATTORNEYS FOR DEFENDANTS
DORIS PHILPOTT and WILLIAM WILKES

By: /s/ MICHAEL P. AMBROSIO
GEORGE C. BRUNO, ESQ.

COUNTER STATEMENT OF FACTS

(Which includes agreed stipulation presented
to trial court)

This is an appeal taken by the Essex County Welfare Board from a decision of the Superior Court, Law Division, vacating restraints, dismissing its complaint, and holding that Social Security payments are immune from attachment by the Essex County Welfare Board.

The matter was heard below on the following factual stipulation:

"On August 2, 1966 the defendant, William Wilkes, made application to the plaintiff, Essex County Welfare Board, for public assistance under the State program for permanent and total disability assistance. This program is administered by the plaintiff, Essex County Welfare Board, in accordance with N.J.S.A.44:7-38 to N.J.S.A. 44:7-42. As a condition to receiving such assistance the said defendant executed an Agreement to Reimburse in accordance with the provisions of N.J.S.A. 44:7-14. Under said Agreement he agreed to pledge to the said plaintiff all and every part of his real or personal property and agreed to hold the same free from sale, transfer or assignments and not otherwise to dispose of same except upon consent of the said plaintiff in writing.

"The defendant, William Wilkes, was referred by the plaintiff, Essex County Welfare Board, to the Social Security Administration for the purpose of filing for possible benefits under the Federal Disability Benefits Law.

"On August 23, 1968, the plaintiff, Essex County Welfare Board discovered that the defendant, William Wilkes, had received a check from the Social Security Administration under date of August 20, 1968 in which he was paid \$1,864.20 as a retroactive award for disability benefits.

"The defendant, William Wilkes, deposited the said check in the Fidelity Union Trust Company,

American Branch, in account #172666 in the name of the defendant, Doris Philpott.

"From that date up to the commencement of the proceeding at bar, namely up to and including August 31, 1968, the defendant, William Wilkes, has received advances of public assistance funds for his individual support and maintenance, totalling the sum of two thousand and eighty-two dollars (\$2,082.00). The said defendant still continues to receive advances of the aforementioned public assistance funds from the said plaintiff.

"The defendant, William Wilkes, contends that this fund is not available for reimbursement of the said plaintiff and the plaintiff has instituted this action in order to enforce its claim against the funds."¹ (A8-1 to A5-25)

By written opinion filed January 22, 1969, the Honorable Samuel A. Larner of the Superior Court, Law Division, ordered that summary judgment be entered in favor of the respondent on the basis that Social Security benefits are immune from attack despite the reimbursement agreement previously executed pursuant to N.J.S.A. 44:7-14. (A59a-1 to A78a-28)

Appellant now appeals from that judgment.

¹ Since the commencement of this action, effective October 1, 1968, respondent Wilkes was terminated from the rolls of Welfare Board. He does not now, nor will he require any further assistance from the Essex County Welfare Board as long as his present monthly federal benefits continue.

OPINION

(Filed January 22, 1969)

Argued: December 20, 1968 Decided: January 20, 1969

Mr. Felix A. Martino argued the cause for plaintiff (Mr. John A. Matthews, Jr., attorney for plaintiff).

Mr. George Charles Bruno of the District of Columbia Bar, appearing pro hac vice, argued the cause for defendants, Doris Philpott and William Wilkes, (Mr. Michael P. Ambrosio, Newark Legal Services Project, attorney for defendants).

LARNER, J.S.C.

This matter came before the court on an order to show cause why a judgment should not be entered in favor of the plaintiff, Essex County Welfare Board, directing the Fidelity Union Trust Company to turn over to the plaintiff moneys on deposit in its bank in the name of Doris Philpott. To eliminate procedural pitfalls, the parties submitted a stipulation of facts and consented that the court determine the matter as if on final hearing based upon those facts.

On August 2, 1966, the defendant, Wilkes, applied to the Essex County Welfare Board for financial assistance under the State program for total disability assistance. N.J.S.A. 44:7-38, *et seq.* As a condition for said assistance, the defendant executed a reimbursement agreement in accordance with the provisions of N.J.S.A. 44:7-14 whereby he promised to reimburse the Board for all advances made to him and agreed that the filing of the reimbursement agreement would have the same force and effect as a judgment. The agreement and the statute also provide that the defendant pledges as security for such reimbursement all of his real and personal property. N.J.S.A. 44:7-14.

Defendant Wilkes was then referred by the Board to the federal Social Security Administration to apply for disability insurance benefits under 44 U.S.C., ch. 7. As

a result, defendant received a check on August 20, 1968 from the Social Security Administration in the sum of \$1,864.20 as a retroactive award for disability benefits. By that time, the Welfare Board had advanced to defendant the total sum of \$2,082.

Upon receipt of the Social Security check, defendant Wilkes deposited the same in the Fidelity Union Trust Company in an account in the name of the defendant, Doris Philpott. He admits, however, that the money is held in trust for him and that the defendant, Philpott, has no proprietary interest in the account. Plaintiff seeks reimbursement from the moneys on deposit in the bank.

Defendant contends that plaintiff is not entitled to reimbursement from this fund for several reasons, basing his argument mainly on the following: the federal statute underlying the Social Security payment, 42 U.S.C. Sec. 407, 49 Stat. 624 (1939), prohibits transfer or assignment of any future payments under the Act and provides that none of the monies paid or payable are subject to execution, levy, attachment, garnishment or other legal process and (2) the Congressional policy underlying the Social Security program preempts invasion of its benefits by all creditors of the recipient, including the Essex County Welfare Board, despite the reimbursement provisions of the agreement and the applicable New Jersey statutes. In addition, defendant attacked the validity of the required reimbursement agreement on constitutional grounds, but the recent United States Supreme Court opinion of *Snell v. Wyman*, No. 191, January 13, 1969, *affirming* 281 F. Supp. 853 (S.D.N.Y. 1968) is dispositive of this issue contrary to defendant's position.

The pertinent Federal statute, 42 U.S.C. Sec. 407, reads as follows:

"The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, at-

tachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."

The act covers two sets of circumstances. It prohibits the transfer or assignment of any future payments thereunder and exempts the moneys "paid or payable" from reach of creditors through legal process. If the plaintiff were an ordinary creditor seeking to levy on the lump sum fund received from the Social Security Administration, the statute by its terms would bar such process. The fund would be exempt from creditors even though its form had been converted from a check payable to the defendant to a bank account belonging to him. See *Lawrence v. Shaw*, 300 U.S. 245, 250 (1937) and *Porter v. Aetna Casualty & Surety Co.*, 370 U.S. 159, 162 (1962) as to parallel construction of Veterans Administration Act.

The intent of Congress is clear, namely to protect the recipient from the attack of creditors before and after the moneys are paid, and to permit him or his dependents to obtain the necessities of life. As long as the fund is not converted to a permanent investment, its mere deposit in a bank for use by the recipient does not expose it to attachment or levy by creditors. *Lawrence, supra*; *Porter, supra*; *Century Indemnity v. Mead*, 159 A.2d 325, 328 (Vt. 1960). cf. *Carrier v. Bryant*, 306 U.S. 545 (1939).

Hence, the remaining issue is whether the Welfare Board is in the category of a creditor so as to be deprived of reimbursement from the Federal funds. A perusal of Title 44 of the New Jersey Statutes and particularly N.J.S.A. 44:7-14 leads to the conclusion that moneys paid by the County Welfare Boards are loans or advances and are not outright gifts to the poor. The Legislature determined as a matter of policy that such welfare payments may only be made upon condition that the recipient execute a reimbursement agreement. In many cases, of course, these agreements do not serve any practical purpose because of the absence of assets on the part of the most recipients. Nevertheless, the

ability to recoup money in some instances serves the social purpose of adding those moneys to the totality of the funds available for assistance to the needy. Such a legislative purpose is laudable and serves the welfare of the greatest number of indigents in the community.

In any event, as a result of the reimbursement agreement and the underlying statute, the County Welfare Board became a creditor of the defendant Wilkes to the extent of the moneys advanced under the program. As such a creditor, it would be subject to the limitations placed upon creditors by the foregoing exemption in the Federal statute in the absence of any countervailing provision or policy. And since the New Jersey statute granting reimbursement to the County Welfare Board is in real conflict with the Federal statute, it must yield thereto so as to afford exemption of the Social Security benefits. *U.S. Const. Art. VI, cl. 2; Sola Electric Co. v. Jefferson Electric Co.*, 317 U.S. 173 (1942); *Hill v. Florida*, 325 U.S. 538 (1945).

The Board contends, however, that it is in a unique position and that its status is outside the scope of the class of creditors contemplated by Congress in adopting 42 U.S.A. Sec. 407. It bases its contention on a dichotomy between "voluntary" and "involuntary" creditors as articulated by the Court of Appeals of the District of Columbia Circuit in *Savoid v. District of Columbia*, 288 F. 2d 851 (1964) when dealing with a similar exemption provision in the Veterans Administration Act. The court in that case held that the District of Columbia was not barred by the exemption statute from recovery by way of reimbursement from Veterans Administration benefits paid to an incompetent and in the hands of his representative. The court concluded that the District as a governmental instrumentality was not a "voluntary" creditor in the ordinary sense and was therefore not within the class of creditors contemplated by Congress in the exemption provision of the statute. By this distinction, the court undoubtedly meant that inasmuch as the hospital was governmentally owned and the veteran was committed there by court order, the District of Columbia did not voluntarily extend its facilities and

services to the veteran. However, the opinion lacks any rationale underlying the created dichotomy beyond the statement of the judicial conclusion.

Similar results were reached in unreported decisions by the Federal District Court of New Jersey with regard to veterans' insurance proceeds, and by the Law Division of the Superior Court of New Jersey in a case involving Social Security benefits. Unfortunately, these opinions also do not attempt to express the basis for the distinction beyond the statement of the conclusion itself, namely, that the public body was not a creditor within the contemplation of Congress in the applicable statute. See also to same effect: *State v. Bean*, 195 A. 2d 68 (Me. 1963); *In Re Bemowski's Guardianship*, 88 N.W. 2d 22, (Wis. 1958); *Dept. of Public Welfare v. Sevcik*, 164 N.E. 2d 10 (Ill. 1960).

In Pennsylvania, recovery was denied by a trial court to the Commonwealth in a veteran's pension case because of the effect of the exemption provision, even though the claimant was the state. *Dilijonas Estate*, 16 Pa. D. & C. 2d 142 (*Orphans' Ct.* 1958). cf. *Ace Estate*, 24 Pa. D. & C. 2d 534 (*Orphans' Ct.* 1960). But see other Pennsylvania trial court decisions: *Comm. v. Thompson*, 22 Pa. D. & C. 2d 236 (C.P. 1960); *Comm. v. Garlick*, 26 Pa. D. & C. 2d 389 (C.P. 1961); *Klaric Petition*, 27 Pa. D. & C. 2d 93 (*Orphans' Ct.* 1961).

There is, then, no precedent in any reported opinion on this question which is controlling on this court. And the opinions which have refused to enforce the exemption provision of the Federal statute are hardly persuasive.

In *Thiel v. Thiel*, 41 N.J. 446 (1964), the plaintiff sought to reach pension funds due to her husband from his employer in satisfaction of a support order for herself and her children. The pension agreement underlying the payment of the funds to the employee contained a restrictive provision that no "pension" or payment on account of any person [shall] be subject to attachment, execution or other legal process against the PENSIONER." 41 N.J. at p. 449. The husband contended that this provision immunized the fund from garnishment by his wife. The Supreme Court held that the limitation

in the pension agreement did not apply to a wife seeking to reach the pension funds for support for herself and her children. Justice Schettino supported this conclusion on the basis of the following reasoning: p. 451

"Regardless of the precise and restrictive wording of an exemption provision, the restraint created should not be a barrier against recourse to the fund when it provides the only reasonably accessible asset for support of the wife within her state of residence. *Cf. Schlaefer v. Schlaefer*, 71 App. D.C. 350, 112 F. 2d 177, 180 A.L.R. 1014 (1940). The purpose of exemptions is to relieve the person exempted from the pressure of claims hostile not only to his own essential needs but also to those of his dependents. But the purpose cannot be one of relieving him of familial obligations, perhaps destroying what may be the family's last and only security, short of public relief. The husband's duty is to share his pension benefits with his wife, and the courts of the state of her residence, if they have jurisdiction over the fund, ought to enforce that duty when there is no other reasonably practical means of obtaining support open to her within the state. Moreover, if we were to uphold his claim of exemption, we would 'feed the husband and starve the wife.' *Wetmore v. Wetmore*, 149 N.Y. 520, 529, 44 N.E. 169, 171, 33 L.R.A. 708 (Ct. App. 1896)."

The same philosophy was applied in a marital situation involving a statutory exemption of a public employee's pension in *Fischer v. Fischer*, 13 N.J. 162 (1953).

These cases rejecting the immunity provision of a statute or contract when the claim is made by members of the recipient's family for support are based upon the reasoning that the funds available to the husband were intended not only for his benefit but also for the benefit of his family at a time when his earning power has been reduced or terminated. They are based upon the special circumstance that the claimants seeking to reach the fund are identified with the beneficiary himself; and

that the pension in itself was always intended to protect not only the husband but his family as well. Because of this underlying purpose of the pension funds, the courts have refused to enforce the literal words of the exemption provision so as to deprive the family of a means of support and subject its members to the need for public relief.

This line of cases is not apposite to the circumstances involved herein. The Welfare Board is not an intended beneficiary, directly or indirectly, of the funds generated by the legislative policy underlying the Social Security legislation. It is a third party who asserts a claim against that fund because of its statutory and contractual position as a creditor. It is not identified with the recipient of the fund as is a wife or children; and it has no paramount right which transcends the expressed policy of the federal government in creating the Social Security Administration. It does not stand in such a position as to impel a court to disregard the clear language of the statute and impose an exception in its favor.

Although the claim of the Essex County Welfare Board serves a valid social purpose in enforcing the policy of repayment espoused by the New Jersey Legislature, I am unable to find in the Federal statute or the cases interpreting the same any sound basis for concluding that the Board is not a creditor subject to the same limitation as other creditors. The distinction made by other courts between "voluntary" and "involuntary" creditors is an artificial one which has no support in the pertinent legislation. There would appear to be no logical basis for treating the Board any differently from any other person or organization who advanced moneys to the indigent individual for his personal needs.

As observed by Judge Jayne in *Middlesex County Welfare Board v. Motolinsky*, 134 N.J. Eq. 323, 331 (Ch. 1944) in considering the right of a Welfare Board to reimburse from the proceeds of a life insurance policy:

"The complainant as a municipal body cannot be distinguished from the creditors comprehended

by the statute. Equity cannot fashion exceptions which circumvent a statute obviously intended to encircle the rights of all creditors."

If a relative or a neighborhood grocer or a charitable institution who advanced funds or credit for the maintenance and support of an individual would be barred from recovery out of the federal funds, why should a Welfare Board be in any better position? The mere coincidence that the claimant is a public body cannot dictate a contrary result. In the absence of any exception in the statute demonstrating such an intent, the will of Congress must be enforced.

JUDGMENT

(Filed February 13, 1969)

This matter being opened to the Court by John A. Matthews, Jr. (Felix A. Martino appearing) attorney for the plaintiff, in the presence of George Charles Bruno, attorney for the defendants, upon the adjourned return day of an Order to Show Cause dated September 9, 1968, and the parties having submitted a stipulation of facts and consenting that the Court determine the matter as if on final hearing based upon these facts; and the Court having considered the briefs submitted and the arguments of counsel, and having heretofore rendered its written opinion under date of January 20, 1969;

It is on this 6th day of February, 1969
ORDERED that Judgment be entered in favor of the defendants, Doris Philpott, William Wilkes and Fidelity Union Trust Company, and against the plaintiff, Essex County Welfare Board, without costs.

/s/ Samuel A. Larner, J.S.C.
SAMUEL A. LARNER, J.S.C.

We consent to the form of the within Judgment.

STEPHEN APOLLO, Esq.
Attorney for Defendants
Newark Legal Services Project

By: /s/ Michael P. Ambrosio
MICHAEL P. AMBROSIO
Attorney for Defendants

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-955-68

ESSEX COUNTY WELFARE BOARD, a corporate entity of
the State of New Jersey, PLAINTIFF-APPELLANT

v.

DORIS PHILPOTT, WILLIAM WILKES and FIDELITY UNION
TRUST COMPANY, DEFENDANTS-RESPONDENTS

Argued November 24, 1969

Before Judges Kilkenny, Labrecque and Leonard.

On appeal from Essex County Court, Law Division,
whose opinion is reported in 104 N.J. Super. 280
(1969).

Mr. Ronald Reichstein argued the cause for appellant
(Mr. John A. Matthews, Jr., attorney).

Mr. Altheair A. Lester of Newark Legal Services
Project argued the cause for respondents.

Miss Annamay T. Sheppard of New Jersey State
Office of Poverty and the Law filed a brief as
amicus curiae.

PER CURIAM—Decided Feb 24 1970

The Judgment is affirmed essentially for the reasons
expressed by Judge Larner in his opinion, reported in 104
N.J. Super. 280 (Cty. Ct. 1969).

We requested at oral argument supplemental information
as to the period of time embraced by the Social
Security check of \$1864.20 received on August 20, 1968
“as a retroactive award” for disability benefits. For
completeness of the record, we wanted to ascertain
whether the benefits were received for the same period
defendant Wilkes was receiving financial assistance from
the Essex County Welfare Board. We have only now
been supplied with the requested information.

Defendant Wilkes applied to the Essex County Welfare
Board for assistance on August 2, 1966; received an

initial grant of \$108 in February 1967, which covered January 1967, and regular monthly payments of \$108 from February 1967 through July 1968, for a total of \$2082 up to the time of the commencement of these proceedings. He still was receiving public assistance funds from plaintiff, when it filed its brief herein.

Wilkes received a check in the sum of \$1864.20, dated August 20, 1968, from the Social Security Administration. It was a retroactive award and represented monthly social security disability insurance benefits paid to him for the months of May 1966 and then from July 1966 through July 1968. Beginning with the May 1966 payment, his monthly benefit was \$69.60 and was increased to \$78.70 effective February 1968. The \$1864.20 check was deposited in Fidelity Union Trust Company in the name of defendant Doris Philpott. Concededly, she holds the account in trust for Wilkes.

Thus, the records show that Wilkes received funds from both sources—Welfare Board and Social Security—covering the period from January 1, 1967 through July 1968. However, he did not receive monthly checks from both agencies at the same time, albeit the retroactive award did in some measure cover the same period.

Notwithstanding the foregoing additional facts, we conclude that the immunity from attachment, execution and levy of Social Security benefits paid or payable, provided for under 42 U.S.C. 407, immunized from seizure by the Essex County Welfare Board the lump sum benefits received by Wilkes from the Social Security Administration. The reimbursement agreement signed by Wilkes has the force of a judgment, N.J.S.A. 44:7-14; but enforcement of that judgment by the Welfare Board is subject to the same limitations expressed in the paramount Federal law, 42 U.S.C. 407, as in the case of any other general judgment.

Affirmed.

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BALTIMORE, MARYLAND 21241

[SEAL]

Refer to: DI:0:I
134-18-1094
Dec. 15, 1969

[Received Dec. 22, 1969—Newark Legal Services Project]

Mr. Altheair A. Lester
Newark Legal Services Project
Central Office
449 Central Avenue
Newark, New Jersey 07107

Dear Mr. Lester:

Re: William Wilkes, 60 Hayes Street, Newark, New Jersey 07103

This letter is in reply to your inquiry dated November 25, 1969, regarding the amount of benefits paid to Mr. Wilkes and the period of time for which these benefits were paid.

We have examined his records and found that a period of disability was established for him beginning November 30, 1963. His first month of entitlement to benefits was June 1964, and his benefit amount was \$65.00 monthly. This amount was increased to \$69.60 monthly beginning January 1965, and again to \$78.70 effective February 1968. These increases were granted by a change in the law. The check for \$1,864.20 was for benefits from May 1966 through July 1968, less the check for June 1966. We had withheld benefits pending a newer address at that time. When we received the new address, this check was released to Mr. Wilkes.

We hope this information is helpful.

Sincerely yours,

/s/ C. C. Hall
C. C. HALL
Assistant Director
Bureau of Disability Insurance

January 11, 1971

Office of the Clerk
Supreme Court of New Jersey
State House Annex
Trenton, N. J.

Attention: Irving B. Zeichner

RE: ESSEX COUNTY WELFARE BOARD

v.

PHILPOTT, et al
A-42

Dear Sir:

At the argument of this matter, the Court requested additional information concerning benefits paid to Mr. Wilkes.

I have examined the records of the Essex County Welfare Board and enclose herewith a statement containing the requested information.

There was some difficulty locating the file and I apologize to the Court for the delay.

Very respectfully,

ESSEX COUNTY WELFARE BOARD

/s/ Ronald Reichstein
RONALD REICHSTEIN
Associate Counsel

RR:fb
Encl.

cc: Richard N. Tilton, Esq.
Newark Legal Services Project
449 Central Avenue
Newark, N. J.

RE: ESSEX COUNTY WELFARE BOARD

vs.

PHILPOTT, *et als*

Mr. Wilkes first applied for assistance April 14, 1964 and received benefits from Welfare of \$108. per month as of September 1, 1964 until January 1, 1965, at which time it was ascertained that he was receiving Social Security Benefits of \$60. per month. The Social Security Benefits were paid for the period starting August 1, 1964. Mr. Wilkes' first Social Security check was for \$180. on October 28, 1964. As of January 1, 1965, Welfare benefits were reduced to \$43. per month and continued until June 30, 1965, when Mr. Wilkes' case was discharged because he was then in the Verona Sanitarium.

Mr. Wilkes' case was reopened effective as of January 1, 1967 for Welfare benefits of \$108. per month until June 1, 1968 when it was reduced to \$30. per month, because it was ascertained that he had been receiving monthly Social Security Benefits of \$78.70 per month. Mr. Wilkes did not receive his July, 1968 Social Security check and additional Welfare benefit of \$72. was paid to him for that month. The \$30. per month payments continued to March 1, 1969 when there was an increase to \$54. per month because of a rebudgeting. These payments continued until May, 1970 at which time it was ascertained that Mr. Wilkes was also receiving \$92. per month from the Veterans Administration effective as of July 1, 1970 and his income from VA and SS then exceeded his budgeted needs.

February 12, 1971

Honorable Chief Justice, and
Associate Justices of the
New Jersey Supreme Court
State House Annex
Trenton, New Jersey

RE: ESSEX COUNTY WELFARE BOARD vs. PHILPOTT, et als
A-42

Honorable Gentlemen:

When this case was before the court on oral argument, the question was posed as to whether there were any administrative determinations as to the proper construction of 42 U.S.C. § 407.

I have received the attached reply to your inquiry from Hugh F. McKenna, Director of the Bureau of Retirement and Survivors Insurance, Social Security Administration, in the U. S. Department of Health, Education and Welfare.

Mr. McKenna, in his letter, categorically states that "No official Administration interpretation of Section 407 distinguishes between public, private and individual creditor claims against Social Security payments." According to Mr. McKenna, there would appear to be no justification for any legal distinction between "voluntary" creditors (private) and "involuntary" creditors (public). The legal rights of both should therefore be the same. The "involuntary-voluntary" dichotomy which the plaintiff-appellant in this case proposes does not enjoy the support nor encouragement of the Social Security Administration.

I have also enclosed typed copies of the Regulation (Law and Regulation Issue No. 52, Regulations No. 4, Subpart J, 404.970, July 29, 1968) and two Rulings (62-12 and 63-7) relating to Section 407 that were sent to me by Mr. McKenna. The Rulings seem to add little to the instant case. Section 404.970 renders some assistance

and seems to reaffirm the plain meaning of the language of 42 U.S.C. 407. That is:

"The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law."

If the Court wishes any further assistance from me, I stand ready to oblige. I may be reached at the above address and I would request that the Court refer future correspondences to me here.

Wherefore, the Mr. Wilkes, Defendant-Respondent, prays that the judgment of the Courts below be affirmed and that his Social Security Benefits presently in escrow be restored to him.

Respectfully,

GEORGE CHARLES BRUNO

GCB:an

Enclosures

cc: Ronald Reichstein
Hall of Records
Essex County Welfare Board
Newark, New Jersey

William Wilkes
60 Hays Street
Newark, New Jersey

[Post Mark Trenton—[Illegible]]

**PLEASE FURNISH SERVICE(S) INDICATED
BY CHECKED BLOCK(S), REQUIRED FEE(S)
PAID.**

- Show to whom, date and Deliver ONLY
address where delivered to addressee

RECEIPT

Received the numbered article described below.

Registered No. Signature or name of addressee
(Must always be filed in)

Certified No.

318945

STATE OF NEW JERSEY

Signature of Addressee's Agent, if any

Insured No.

BEN W. ROUNDS

Date Delivered

Show Where Delivered (*only if requested*)

FEB 16 1971

SOCIAL SECURITY

Department of
HEALTH, EDUCATION, AND WELFARE
Social Security Administration

No. 1963-1

January 1963

RULINGS ON FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

SECTION 204 and 207.-OVERPAYMENT-ADJUSTMENT AFTER DISCHARGE IN BANKRUPTCY

20 CFR 404.502

A worker was overpaid \$1176 in old-age insurance benefits; the overpayment arose primarily through his fault. Subsequently he was granted a discharge in bankruptcy, the overpayment being scheduled among his debts in the bankruptcy proceedings. Shortly afterward he died and his widow became entitled on his earnings record to a \$253 lump-sum death payment. Held, the discharge in bankruptcy does not preclude the adjustment of an overpayment against benefits payable on the worker's earnings record, since rights under title II are specifically exempt from operation of the bankruptcy law, and the lump-sum of \$255 due the widow will be paid but will be used to reduce the overpayment.

A worker, D, became entitled to old-age insurance benefits beginning October 1957, when he attained age 65. At that time he was not working, and benefit payments were made to him. He resumed full-time employment in June 1958 and continued in this work until shortly before his death in September 1962. Because of work deductions required under section 203 by reason of his work and earnings, no benefits were payable to him for June 1958 or any subsequent month through August 1962, in which month his entitlement ended because of his death. Though aware of the requirement that he must

notify the Administration upon his return to work, he failed to do so. The Administration learned about his work from another source, but only after D had been overpaid \$1176, at which time his payments were suspended.

The Administration notified D that he owed the Government \$1176; that recovery of this amount could not be waived under section 204(b) of the Act because (among other reasons) he had not been "without fault" in the circumstances giving rise to the overpayment; and asked him to make refund. In bankruptcy proceedings instituted shortly afterward, he listed among his debts the \$1176 due the Government, and ultimately was given a discharge in bankruptcy. At the time of his death, no part of the \$1176 had been recovered.

Upon D's death, his widow, age 58, filed application for a lump-sum death payment on D's earnings record, and established her entitlement to such a lump sum in the amount of \$255.

Under section 204(a), and Regulations No. 4. § 404-502, benefits to which an individual is entitled after he has been overpaid benefits will not be paid or will be decreased until the amount of the overpayment has been recovered; and if any part of such overpayment has not been recovered when the overpaid beneficiary dies, benefits (including a lump-sum death payment) subsequently payable to other beneficiaries on the same earnings record will not be paid or will be decreased until the entire amount of the overpayment has been recovered. Section 204(b) prohibits recovery of the overpayment where the overpaid individual was without fault and adjustment or other recovery would either defeat the purpose of title II or be against equity and good conscience.

In the present case, an overpayment of \$1176 made to D on his own earnings record had not been recovered when he died; his widow became entitled on D's earnings record to a lump sum of \$255; section 204(b) was not applicable because D, the overpaid individual, had not been "without fault" in the circumstances which

gave rise to the overpayment. On these facts, considered apart from D's discharge in bankruptcy, the Act and the Regulations clearly require that the \$255 lump sum otherwise due the widow be used to reduce the overpayment.

D's discharge in bankruptcy may preclude the Government from maintaining civil suit against D or his estate to recover overpayments made to D and duly scheduled in the bankruptcy proceedings. However, his discharge in bankruptcy does not cancel the overpayment or preclude adjustment required by section 204(a) against subsequent benefits on the same earnings record, whether the benefits be his own or those of a survivor. The terms of section 204(a) are mandatory, and operate irrespective of whether there exists a liability enforceable in the courts. They do not merely permit the Administration to set off and obligation due it against an obligation it owes to the claimant; rather, they require adjustment reducing subsequent benefits payable until the amount of the erroneous payment is recovered.

Further, section 207 of the Act specifically provides that title II rights and payments are not to be affected by the operation of the bankruptcy law. This section provides:

The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the monies paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. (Emphasis supplied)

Undoubtedly, the principal purpose of this section is to exempt title II benefits from the claims of creditors. But it also appears from the language of section 207 that Congress exempted from the operation of the bankruptcy law all "rights" under title II. In section 204(a) of title II, the Secretary has clear authority to adjust overpayments against "subsequent benefits payable" un-

der the law. That this authority creates a "right" would seem evident from *United States v. Munsey Trust Co.*, 332 U.S. 234, 239; 67 S.Ct. 1599, 1602 (1947), wherein the Supreme Court said: "The Government has the same right 'which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him.'" Thus, the Secretary would be required to exercise this "right" independently of the provisions of the bankruptcy law.

Accordingly, it is held that the lump-sum death payment of \$255 payable to D's widow must be withheld to recover part of the overpayment owed by D.

No. 1962-1
January 1962

SOCIAL SECURITY

Department of
HEALTH, EDUCATION, AND WELFARE
Social Security Administration

RULINGS ON FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE

SECTION 207.-LEVY AGAINST BENEFITS

20 CFR 404.970

SSR 62-12

Generally, social security benefit checks are exempt from execution, levy, attachment, garnishment or other legal process, or from the operation of any bankruptcy or insolvency law. One exception is that social security benefits are subject to the authority given to the Secretary of the Treasury to make levies or seizures for the collection of delinquent Federal taxes.

The question is whether social security benefit checks are exempt from levy or seizure by the Secretary of the Treasury.

Section 207 of the Social Security Act provides:

The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

However, section 6331 of the Internal Revenue Code of 1954 (26 U.S.C. 6331) which was enacted into law on August 16, 1954, subsequent to the enactment of section 207, gives the Secretary of the Treasury the right to levy or seize for collection of delinquent Federal taxes, prop-

erty, rights to property whether real or personal, tangible, or intangible, and the right to make successive levies and seizures until the amount due, together with all expense, is fully paid.

Section 6334 of the Internal Revenue Code of 1954 (26 U.S.C. 6334) provides in subsection (c):

Notwithstanding any other law of the United States, no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

The property exempt from levy in subsection (a) includes wearing apparel and school books; fuel, provisions, furniture, and personal effects, not to exceed \$500 in value; books and tools of a trade, business, or profession, not to exceed \$250 in value. Social security benefits are not specifically exempted from levy by this subsection. Furthermore, as between conflicting treatment of the same matter by two statutes (section 207 of the Social Security Act and section 6334 of the Internal Revenue Code of 1954), the one enacted later (section 6334 of the Internal Revenue Code of 1954) would control with respect to that matter.

Therefore, since section 6334 of the Internal Revenue Code of 1954 does not specifically exempt social security benefits from levy, such benefit checks may be levied upon by the Secretary of the Treasury under section 6331 of the Internal Revenue Code of 1954.

July 29, 1968

LAW AND REGULATIONS ISSUE NO. 52

Regulations No. 4

**SUBPART J—PROCEDURES, PAYMENT OF BENEFITS
AND REPRESENTATION OF PARTIES**

404.970 TRANSFER or ASSIGNMENT.—The Administration shall not certify, as provided in § 404.968, any amount for payment to an assignee or transferee of the person entitled to such payment under the Act, nor shall the Administration certify such amount for payment to any person claiming such payment by virtue of an execution, levy, attachment, garnishment, or other legal process or by virtue of any bankruptcy or insolvency proceeding against or affecting the person entitled to the payment under the Act.

SUPREME COURT OF NEW JERSEY
SEPTEMBER TERM 1970

A-42

ESSEX COUNTY WELFARE BOARD, a corporate entity of
the State of New Jersey, PLAINTIFF-APPELLANT

v.

DORIS PHILPOTT, WILLIAM WILKES AND FIDELITY
UNION TRUST COMPANY, DEFENDANTS-RESPONDENTS

Argued December 21, 1970—Decided July 12, 1971

On appeal from Superior Court, Appellate Division,
whose opinion is reported in 109 N.J. Super. 48.

Mr. Ronald Reichstein argued the cause for plaintiff-
appellant (Mr. John A. Matthews, Jr., attorney; Mr.
Reichstein, on the brief).

Mr. George Bruno, of the Newark Legal Services Proj-
ect, argued the cause for defendants-respondents Doris
Philpott and William Wilkes (Mr. Richard N. Tilton,
of the Newark Legal Services Project, of counsel).

No appearance entered or brief filed on behalf of de-
fendant-respondent Fidelity Union Trust Company.

The opinion of the Court was delivered by HALL, J.

The question in this case is whether a state welfare agency, which had advanced monthly disability assistance to a person under N.J.S.A. 44:7-38 to -42, may recoup, out of a subsequent, retroactive, lump sum federal social security disability insurance benefits payment to him, an amount representing the duplication of benefits thereby received.

The federal payment in the sum of \$1864.20 to defendant Wilkes, the recipient of both sets of benefits, was deposited and constitutes the balance in a bank account under the name of defendant Philpott (as a matter of convenience only and concededly held in trust for Wilkes)

in defendant Fidelity Union Trust Company.¹ The state agency, plaintiff Essex County Welfare Board, brought suit in the Essex County Court to reach the bank account for reimbursement from the duplicated federal payments.² On the return of defendant's motion for summary judgment, it was agreed that the trial court would determine the matter without a jury on a stipulation of facts as if on final hearing. The sparse stipulation³ was designed to present to the court only the basic legal question of whether plaintiff is barred from recovering any amount from the account by reason of a provision of the federal social security law, 42 U.S.C. § 407, which reads:

The right of any person to any future payment under this subchapter [Subchapter II—Federal Old-Age, Survivors, and Disability Insurance Benefits—of Chapter 7—Social Security—of Title 42—Public Health and Welfare—of the United States Code] shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other

¹ The bank was made a defendant in order to restrain withdrawals pending the litigation and has taken no part in the suit. Interim relief to that effect was allowed and the account balance is held in escrow pending the outcome of the action.

Since Wilkes is the only real party in interest, "defendant" will hereafter refer to him alone.

² Although plaintiff's complaint and the stipulation of facts, if read literally, give the impression that it claims a right to the whole amount of the lump sum social security payment, we understand that it quite properly asserts only a right to recoup admittedly overlapping payments to the extent of the amount of the federal benefits, as if they had been paid monthly during the duplicated period.

³ The stipulation has been supplemented by additional information furnished by the parties (chiefly relating to the periods and amounts of benefits received from each source) during and after appellate arguments. Unfortunately this supplemental fiscal information is not in entire agreement, so we are unable to speak definitively of the precise total and period of the overlap and the exact relation of that amount to the sum on deposit in the bank account. Later references to this aspect of the case are to be read accordingly.

legal process, or to the operation of any bankruptcy or insolvency law.

The trial court held, 104 N.J. Super. 280 (Co. Ct. 1969), that plaintiff was barred from any recoupment as a matter of law by reason of a literal reading of section 407 regardless of the policies and equities involved. The Appellate Division affirmed "essentially for the reasons expressed" in the trial court opinion. 109 N.J. Super. 48 (1970). We granted plaintiff's petition for certification. 56 N.J. 480 (1970).

In August 1966 defendant applied to plaintiff⁴ for benefits under the state program of assistance, provided for by N.J.S.A. 44:7-38 to -42 and administered by the county welfare boards, to any needy person who has attained the age of 18 but is less than 65 years of age and is permanently and totally disabled by reason of any physical or mental defect, disease or impairment other than blindness.

N.J.S.A. 44:7-39 prescribes that the assistance to be extended under this program shall in all other respects be governed by the provisions of the statutory sections dealing with old age assistance; i.e. assistance to persons who have attained the age of 65 years who lack adequate support, are unable to support themselves and are without relatives or other persons able or willing to support them. See N.J.S.A. 44:7-5. Defendant met all pertinent eligibility requirements.

Assistance to the aged needy, and so to the permanently and totally disabled as well, is granted solely on the basis of and only to the extent of need. N.J.S.A. 44:7-12 states that the county welfare board shall extend, to eligible persons, assistance "adequate to provide for their reasonable maintenance and well-being . . . with due regard to the conditions existing in each case, in accordance with the rules and regulations" of the state Division of Public Welfare in the Department of

⁴The application appears actually to have been a reapplication or a request for reopening defendant's case. He had previously received state disability assistance, which was terminated in 1965 because he was a patient in a county sanitarium. See N.J.S.A. 44:7-39(1).

Institutions and Agencies. See also N.J.S.A. 44:7-6. This requires a determination by the board of the amount needed by the particular eligible applicant to reasonably maintain himself, which is commonly referred to as the individual's budget. See New Jersey Categorical Assistance Budget Manual, § 608, "Budgeting Procedures." It further requires that, in fixing the dollar sum of assistance to be extended to him, allowance must be made for any actual (see New Jersey Categorical Assistance Budget Manual, § 402, "Available Resources"), but not potential (see New Jersey Categorical Assistance Budget Manual, § 407, "Potential Resources"), income from other sources received by him. The assistance then advanced is the difference between the budget and such income. See New Jersey Categorical Assistance Budget Manual, §§ 401.1 to 401.7, "Resources—General Considerations." See also N.J.S.A. 44:7-5(e). Once that figure is determined, the direction to pay it is mandatory, subject to future adjustment depending on changing circumstances. In this case plaintiff fixed defendant's need at \$108 per month, with no offsetting other income. While we are not certain from the information furnished exactly when assistance payments in this amount were commenced or exactly how long they continued, it is apparent that they were made at least as of January 1, 1967 and continued until some month in the middle of 1968.

Such old age and disability assistance is not an outright grant or gift to the recipient, but only an "advance" subject to repayment. Thus N.J.S.A. 44:7-14 provides:

- (a) Every county welfare board shall require, as a condition to granting assistance in any case, that all or any part of the property, either real or personal, of a person applying for old age assistance, be pledged to said county welfare board as a guaranty for the reimbursement of the funds so granted as old age assistance pursuant to the provisions of this chapter. The county welfare board shall take from each applicant a properly acknowledged agreement

to reimburse for all advances granted, and pursuant to such agreement, said applicant shall assign to the welfare board, as collateral security for such advances, all or part of his personal property as the board shall specify.

See also New Jersey Division of Public Welfare, Manual of Administration § 2272, which details the mechanics of the reimbursement requirement. The section, along with *N.J.S.A. 44:7-15*, also provides that the filing of a notice of such agreement with the county recording office has the same force and effect as a judgment of the County Court, law division. The obvious purpose is to enable the board to obtain reimbursement for assistance advanced out of subsequently discovered or acquired real and personal property of the recipient. Defendant gave plaintiff such an agreement to reimburse under date of September 13, 1966.

At the time of defendant's application for state disability assistance, plaintiff obviously believed defendant was entitled to federal disability insurance benefits under the social security act and, according to the stipulation of facts, referred him to the Social Security Administration for the purpose of filing for such benefits. The record does not show either the date of such referral or the date of filing of the application. The exact situation is confusing because defendant had previously been receiving such federal benefits probably until May 1966. It is not clear why they ceased at that date. In any event, on August 20, 1968 he received from the Social Security Administration a check in the amount of \$1864.20 (of which plaintiff promptly learned) representing retroactive social security disability insurance benefits, apparently for the period from May 1966 through January 1968 at the rate of \$69.60 monthly and from February 1968 through June or July 1968 at a \$78.70 monthly rate. There is no clear explanation for the delay in payment. Thus, at least from January 1967 through June or July 1968, defendant received the full amount of state disability assistance plus the monthly social security disability insurance benefits, although the latter was received in a lump sum and not each month

during the period.* It further consequently appears that the check covered federal benefits for a period (seemingly from May 1966 to January 1967) when defendant received no state assistance. This check was deposited in and constitutes the amount of the bank account previously referred to, which the lower tribunals held plaintiff could not reach by reason of 42 U.S.C. § 407.

Federal social security disability insurance benefits stand on quite a different basis than state disability assistance. They are one item of the social security benefits system, created, along with old-age and survivors benefits, in subchapter II of Chapter 7 (Social Security) of Title 42 (Public Health and Welfare) of the United States Code. 42 U.S.C. §§ 401-429. Disability benefits are specifically provided for in 42 U.S.C. § 428. Simplistically summarized, they represent outright grants, not subject to reimbursement, payable monthly, to all eligible persons (the eligibility requirements as far as age and disability are concerned are substantially the same as those for state disability assistance) at a rate computed in accordance with a general mathematical formula. As contrasted with state assistance, they are not based on and have no relation to the particular individual's need from the standpoint of the sum he requires for his reasonable maintenance. Both benefits are designed, of course, for the same general purpose—to furnish support to an individual, the federal to the extent allowed by the formula and the state to the full extent of his need as determined by his budget.

The answer to the question posed at the outset of this opinion depends upon whether Congress intended 42 U.S.C. § 407 to apply to the factual situation before us.

* We understand defendant has been, since the time of the check, receiving monthly social security benefits regularly. When plaintiff learned of the retroactive check and the periodic payment of such benefits thereafter, it reduced his monthly disability assistance to the difference between the federal payment and his budget figure. The exact date of such reduction is not clear. Sometime in 1970 plaintiff learned defendant was also receiving \$92 per month from the Veterans' Administration. The total of this figure and the social security payment exceeded defendant's budget, so plaintiff ceased making any state assistance payment to him.

Of fundamental importance in this connection is the interdependence and very close relationship between the state and federal disability programs. The primary point is that one-half of the funds for assistance under the state program, as well as a larger percentage of state administrative costs, are furnished by the federal government (the balance coming from state sources) by way of grants to the states. 42 U.S.C. §§ 1851-1855.

In order to obtain the federal contribution, the state plan for use of the money for the permanently and totally disabled must be approved by the federal authorities pursuant to standards and directions specified by them. See 42 U.S.C. § 1852. In other words, state assistance must be basically administered according to federal requirements.* The federal statute, 42 U.S.C. § 1852(a)(8), for example, requires the state agency, in determining need, to take into consideration any other income and resources of those claiming disability aid, subject to some exceptions not here pertinent. See Circular Letters Nos. 325 (June 1, 1967) and 800 (May 26, 1970), Division of Public Welfare, New Jersey Department of Institutions and Agencies.

Of even greater significance is the fact that the state, upon recovery of any amount by way of reimbursement, must account to the federal government for the latter's share in the same proportion as it was contributed. Federal Department of Health, Education and Welfare, Handbook of Public Administration: Part V, Fiscal Operations and Accountability, Accountability for Federal Funds Advanced, §§ 3340-3344 (1951). N.J.S.A. 44:7-15; New Jersey Department of Institutions and Agencies: Part V, State Plan for OAA, APTD and ADC Programs, Computation of federal, state and local share of funds collected or recovered, at 12-15. The federal

* Our statutes contain a reciprocal provision, N.J.S.A. 44:7-42, directing the Commissioner of Institutions and Agencies "to issue all necessary rules and regulations and administrative orders and to do all other acts and things necessary to secure for the State of New Jersey the maximum Federal financial participation that is available with respect to a plan of assistance for the permanently and totally disabled"

government, therefore, has a very substantial stake in this suit.

In sum, the scheme is a predominantly federal program for assistance to needy disabled persons, with the federal social security insurance benefits payable without regard to need, and a state program of advancements supplementary thereto, under federal requirements and with federal contribution, to bring support to such persons up to the amount required for their reasonable maintenance, but subject to repayment.

In view of the entire scheme, it is unquestioned that, if an applicant for state disability assistance was at the time receiving monthly federal disability insurance benefits, the amount of the latter would have to be deducted from his budget to arrive at the amount of state assistance. Indeed, defendant concedes that such would have been required here had he received each month's portion of the lump sum federal payment contemporaneously with the state assistance advances. Realistically, what took place was to advance to defendant state disability assistance to the full amount of his budget until monthly federal payments began, so that he would, during the interim, have available the entire sum required for his living needs. Thus the funds plaintiff seeks to reach are accrued moneys, not current benefits necessary for defendant's present support and maintenance. It seeks reimbursement, in accordance with defendant's reimbursement agreement, for support it actually furnished when he needed it to the extent it would have been federally supplied if the monthly federal benefits had begun immediately. The equities are all with plaintiff.

We cannot agree with defendant's contention and the view of the lower tribunals that 42 U.S.C. § 407 bars plaintiff simply because the federal payments were made retroactively in a lump sum. We are convinced that the section was never intended to bar the government from recoupment in such a situation. Not only is defendant's argument contrary to the policies of the overall federal-state benefits scheme, but it runs counter to the rationale of another section of the social security act, 42 U.S.C. § 404. That section, in case of overpayment, directs the

federal authorities to "require such overpaid person or his estate to refund the amount in excess of the correct amount . . ." (subject to certain qualifications not of significance here). 42 U.S.C. § 404(a)(1). There is no suggestion that this may not be accomplished by recovery out of the very benefits paid and is a clear indication to us that section 407 was not intended to bar the federal government in such a case. It should follow, therefore, that neither was the section intended to bar the state from seeking reimbursement, on behalf of the federal government as well as itself, to the extent of the overlapping federal payments.⁷

From the standpoint of precedent, the only cases we have discovered dealing with the precise situation here involved, i.e. payment of full state assistance, with an agreement to reimburse, pending the receipt of social security benefits, are three reported trial court decisions in Pennsylvania. *Commonwealth v. Thompson*, 22 D & C 2d 236 (Lancaster Co. Ct. 1960); *Commonwealth v. Garlick*, 26 D & C 2d 389 (Mercer Co. Ct. 1961); *Klaric Petition*, 27 D & C 2d 93 (Mercer Co. Ct. 1961). All held that the state was not barred, by reason of 42 U.S.C. § 407, from recovery of the overlapping payments out of the subsequent social security payment. They said in substance that the state had, in fact, paid an obligation of the federal government; that, if the recipient were allowed to retain the social security benefits he would in effect be receiving double benefits for the same period of time; and that allowance of the state's claim advanced, rather than defeated, the ends of the federal legislation.

There are, however, well reasoned and long accepted state court decisions reaching a similar result with respect to the effect of a substantially analogous exemption provision in the federal veterans benefits law, 38 U.S.C. § 3101(a). Involved were state claims against such benefits, paid to the guardian of an incompetent veteran and

⁷ New Jersey has an exemption statute with respect to state assistance advances substantially similar to 40 U.S.C. § 407. N.J.S.A. 44:7-35. As far as we know, it has never been urged that the section bars the state from obtaining reimbursement out of the very funds paid for state assistance erroneously or improperly advanced.

deposited in a bank account, for maintenance and care furnished the veteran in a state mental institution. The leading case is *In re Lewis' Estate*, 287 Mich. 179, 283 N.W. 2d 1 (1938) (relied upon in *Garlick, supra*), which held that it could not have been the intention of Congress to bar the state in such a situation because veterans benefit payments were furnished for the purpose of making the means available to the guardian to obtain the very support which the state had furnished. Other decisions to the same effect are: *In re Bemowski's Guardianship*, 3 Wis. 2d 183, 88 N.W. 2d 22 (1958); *Department of Public Welfare v. Sevcik*, 18 Ill. 2d 449, 164 N.E. 2d 10 (1960); *Savoid v. District of Columbia*, 288 F.2d 851 (D.C. Cir. 1961); *State v. Bean*, 159 Me. 455, 195 A.2d 68 (1963). It is at least interesting to note that, although the veterans benefit act has been amended since *Lewis*, the exemption section has not been changed.

Defendant also raises two other points: (1) that the reimbursement agreement provision, N.J.S.A. 44:7-14, is narrowed by N.J.S.A. 44:1-95; and (2) that the reimbursement agreement is void for vagueness in not specifically stating what property of the individual a welfare board can reach. Both are so lacking in merit as not to require discussion.

We therefore conclude that plaintiff is entitled to recover from the bank account the amount of overlapping federal benefits. Since, as we have said, this amount cannot be accurately determined from the information before us, the matter must be remanded for that purpose and the entry of an accordant judgment.

The judgment of the Appellate Division is reversed and the cause is remanded to the Essex County Court for further proceedings as directed in this opinion. No costs.

SUPREME COURT OF THE UNITED STATES

No. 71-5656

DORIS PHILPOTT AND WILLIAM WILKES, PETITIONERS

v.

ESSEX COUNTY WELFARE BOARD

On petition for writ of Certiorari to the Supreme Court of the State of New Jersey.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

May 15, 1972.